



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE

REFER TO FILE: **PD-1**

January 19, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**INTERSTATE 5/HASLEY CANYON ROAD INTERCHANGE IMPROVEMENTS
NEWHALL LAND AND FARMING COMPANY-COUNTY FUNDING AGREEMENT
COUNTY-STATE COOPERATIVE AGREEMENT
SUPERVISORIAL DISTRICT 5
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Mayor of the Board to sign the enclosed funding Agreement between the County and Newhall Land and Farming Company (Newhall) for the Interstate 5 (I-5)/Hasley Canyon Road Interchange Improvements project. The Agreement provides for Newhall to perform the preliminary engineering and acquire the necessary right of way for the project at no cost to County and to finance its share of construction cost of the project, currently estimated to be \$20.6 million. The County is to administer the construction of the project. The total construction cost of the project is currently estimated to be \$33.722 million with Newhall's share being \$20.6 million and the County's share being \$6.8 million, from Castaic Bridge and Major Thoroughfare (B&T) Construction Fee District fees and Tesoro del Valle Project Regional Transportation (RT) fees. The remaining project construction cost will be financed with a grant in the amount of \$6.322 million from the Los Angeles County Metropolitan Transportation Authority (MTA).

2. Approve and instruct the Mayor of the Board to sign the enclosed cooperative Agreement between the County and the State of California, acting by and through its Department of Transportation (Caltrans), providing for the County to administer the construction of the project as part of the adopted 2004 State Transportation Improvement Program.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County and Caltrans propose to construct State highway improvements consisting of a new bridge at Hasley Canyon Road over I-5, modern roundabouts, new freeway ramps, new traffic signal at the intersection of Sedona Way and I-5 southbound on and off ramps, and seismically retrofitting and widening the I-5 bridge over Castaic Creek. Your Board's approval of the enclosed Agreements is necessary for the delegation of responsibilities and the cooperative financing of the project.

Section 130 of the California Streets and Highways Code provides that Caltrans and the County may enter into cooperative agreements for improvements to State highways within the County of Los Angeles.

Implementation of Strategic Plan Goals

This action meets the County Strategic Plan Goal of Service Excellence. By constructing the proposed improvements, traffic flow will be enhanced for County residents who travel on these roads, thereby improving their quality of life.

FISCAL IMPACT/FINANCING

The total construction cost is currently estimated to be \$33.722 million. Funding for this project is included in the Fiscal Year 2005-06 Road Fund Budget which will be reimbursed as follows: \$2.6 million from Castaic B&T Construction Fee District fees, \$4.2 million from Tesoro del Valle Project RT fees, \$6.322 million from MTA Call for Projects grant funds, and \$20.6 million from Newhall.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed funding Agreement, which has been reviewed and approved as to form by County Counsel and signed by Newhall, provides for Newhall to perform the preliminary

engineering and acquire the necessary right of way at no cost to the County and to finance the remaining construction cost in excess of the County's contributions and MTA grant funds. The County is to administer the construction of the project. Under the terms of the Agreement, Newhall is to deliver to the County, within 14 days following the opening of the construction bids for the project, a cash deposit in the amount of \$3.5 million and a Letter of Credit in the amount of \$17.1 million as security to fund its share of the construction cost of the project.

The enclosed County-State cooperative Agreement provides for the County to administer the construction of the project as part of the adopted 2004 State Transportation Improvement Program.

The enclosed cooperative Agreements have been reviewed and approved as to form by County Counsel.

On May 15, 2001, Synopsis No. 80, your Board approved a cooperative agreement with Caltrans, Agreement No. 4441, for the design and right-of-way phase of the project. This agreement defined the terms and conditions under which the project's construction phase would be carried out.

ENVIRONMENTAL DOCUMENTATION

The California Environmental Quality Act requires public agency decision-makers to document and consider the environmental impacts of their actions. On October 19, 2004, Synopsis No. 42, your Board approved the Negative Declaration certified by the State of California Department of Transportation on July 23, 2001, and the finding of no significant impact determination by the Federal Highway Administration on August 15, 2001, prepared for this project.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Old Road and Hasley Canyon Road are major arterial highways on the County's Highway Plan, and the proposed improvements are needed and of general County interest.

The Honorable Board of Supervisors
January 19, 2006
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CONCLUSION

Enclosed are three copies of the funding Agreement with Newhall and five copies of the cooperative Agreement with Caltrans. Upon approval by your Board, please return two copies of the funding Agreement and five copies of the cooperative Agreement marked ORIGINAL to us for processing together with one adopted copy of this letter. The funding Agreement marked COUNTY ORIGINAL is for your files. Once the cooperative Agreement has been executed by Caltrans, we will return a fully executed original Agreement to the Executive Office of the Board.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

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Enc. 2

cc: Chief Administrative Office
County Counsel

A G R E E M E N T

This AGREEMENT, made and entered into by and between NEWHALL LAND AND FARMING COMPANY, a California Limited Liability Company (hereinafter referred to as NEWHALL) and the COUNTY OF LOS ANGELES, a political subdivision of the State of California (hereinafter referred to as COUNTY):

W I T N E S S E T H

WHEREAS, COUNTY entered into an AGREEMENT with the State of California Department of Transportation (Caltrans) to construct interchange improvements at Hasley Canyon Road and Interstate Route 5, some of which will be transferred to Caltrans upon project completion, all of which work is hereinafter referred to as "PROJECT"; and

WHEREAS, NEWHALL proposes to complete all preliminary studies and right-of-way engineering and to prepare plans, specifications, and estimates for PROJECT, which work is hereinafter referred to as "PRELIMINARY ENGINEERING"; and

WHEREAS, NEWHALL is willing to finance the entire COST OF PRELIMINARY ENGINEERING, currently estimated to be One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00); and

WHEREAS, COUNTY proposes to administer the construction of PROJECT; and

WHEREAS, CONSTRUCTION COST OF PROJECT is currently estimated to be Thirty Three Million Seven Hundred Twenty-two Thousand and 00/100 Dollars (33,722,000.00); and

WHEREAS, COUNTY has been awarded grant funds by the Los Angeles County Metropolitan Transportation Authority in the amount of Six Million Three Hundred Twenty-two Thousand and 00/100 Dollars (\$6,322,000.00), hereinafter referred to as "GRANT," to finance a portion of CONSTRUCTION COST OF PROJECT; and

WHEREAS, COUNTY proposes to make the following contributions toward CONSTRUCTION COST OF PROJECT: Four Million Two Hundred Thousand and 00/100 Dollars (\$4,200,000.00) in Regional Transportation fees from its Tesoro del Valle project, and Two Million Six Hundred Thousand and 00/100 Dollars (\$2,600,000.00) from its Castaic Bridge and Major Thoroughfare (B&T) Construction Fee District; and

WHEREAS, NEWHALL is willing to finance the remaining CONSTRUCTION COST OF PROJECT in excess of COUNTY'S contributions and GRANT funds, currently estimated to be Twenty Million Six Hundred Thousand and 00/100 Dollars (\$20,600,000.00); and

WHEREAS, NEWHALL is willing to grant rights of way currently under its control necessary for construction of PROJECT to COUNTY; and

WHEREAS, PROJECT is included as a B&T District project in COUNTY'S existing Castaic District, and the proposed Westside District, wherein newly developed property is subject to B&T fees; and

WHEREAS, NEWHALL owns and plans to develop land within the Castaic and Westside B&T Districts, subject to B&T fees levied by COUNTY; and

WHEREAS, NEWHALL desires to receive B&T fee credits in an amount equal to the sum of COST OF PRELIMINARY ENGINEERING, and NEWHALL'S financial contribution toward CONSTRUCTION COST OF PROJECT:

NOW, THEREFORE, in consideration of the mutual benefits to be derived by NEWHALL and COUNTY and the promises herein contained, it is hereby agreed as follows:

(1) DEFINITIONS:

- a. "COST OF PRELIMINARY ENGINEERING," as referred to in this AGREEMENT, shall include all costs of environmental documentation; design survey; traffic index and geometric investigation; preparation of plans, specifications, and cost estimates; utility engineering; right-of-way engineering necessary for the acquisition of all rights of way needed to construct PROJECT; and all other necessary work to prepare for advertising of PROJECT for construction bids and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any and all of the aforementioned items.
- b. "CONSTRUCTION COST OF PROJECT," as referred to in this AGREEMENT, shall consist of the total of all payments to the construction contractor(s) for PROJECT; the total of all payments to utility companies or contractor for the relocation of facilities necessary for the construction of PROJECT including capping of water wells; the total of all payments to contractor to install monitoring wells, monitor wells, and/or mitigate for potential soil and groundwater contamination; all construction engineering except as set forth in Section (2)c below, and project management costs associated with construction of PROJECT including resident engineer, inspection, survey, materials testing costs; and all other work necessary to construct PROJECT in accordance with the approved plans and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.

(2) NEWHALL AGREES:

- a. To grant all rights of way necessary for PROJECT on property presently owned by or under the control of NEWHALL in the manner and form to be

determined by COUNTY. NEWHALL shall execute, in recordable form, any and all documents and/or deeds, in a form acceptable to COUNTY, at COUNTY'S sole discretion, to complete the legal transfer of said rights of way. NEWHALL agrees that no B&T credit will be given for the value of NEWHALL'S property contributions.

- b. To contract and cause completion of the PRELIMINARY ENGINEERING for PROJECT. The engineer of record is Tetra Tech, Inc.
- c. To retain the engineer of record, Tetra Tech, Inc., to answer design questions during contract bidding and construction, and to prepare any design plan revision required that result from actual field conditions encountered.
- d. To finance the COST OF PRELIMINARY ENGINEERING, currently estimated to be One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00).
- e. To furnish COUNTY, within one hundred twenty (120) calendar days of award of construction contract for PROJECT, a final accounting of the actual COST OF PRELIMINARY ENGINEERING including an itemization of actual payments to engineering consultants and an itemized accounting of all actual labor, equipment, material, indirect, and miscellaneous costs incurred in the completion of PRELIMINARY ENGINEERING.
- f. To finance the CONSTRUCTION COST OF PROJECT in excess of COUNTY'S contributions and GRANT funds as set forth in Sections (3) f and g below currently estimated to be Twenty Million Six Hundred Thousand and 00/100 Dollars (\$20,600,000.00).
- g. To deliver to COUNTY, within fourteen (14) calendar days following the opening of construction bids for PROJECT and upon demand by COUNTY, a Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) cash deposit, hereinafter referred to as 'DEPOSIT', and a Letter of Credit in the amount of Seventeen Million One Hundred Thousand and 00/100 Dollars (\$17,100,000.00), as security to fund NEWHALL'S share of CONSTRUCTION COST OF PROJECT, as defined herein and indicated in Exhibit A attached hereto. Said Letter of Credit is to be issued by a Federally insured lending institution whose financial rating is acceptable to the COUNTY.
- h. Upon receipt of each COUNTY invoice for NEWHALL's share of CONSTRUCTION COST OF PROJECT, to pay COUNTY for the amount invoiced within thirty (30) calendar days.
- i. To review the proposed construction contract amount and any subsequent change orders for PROJECT, and provide written approval within ten (10)

calendar days of presentation by COUNTY. NEWHALL'S approval may only be withheld for good reason and in good faith. If NEWHALL'S response is not received within said ten (10) calendar days, COUNTY may proceed with the award of the construction contract and any subsequent change orders for PROJECT. NEWHALL shall review and approve documents in an expeditious manner so as not to cause any impact on progress and schedule of PROJECT.

- j. NEWHALL shall be responsible for all remediation necessary to bring the right-of-way property transferred to COUNTY under this AGREEMENT to a condition free of hazardous contamination in conformance with applicable Caltrans standards and as more fully indicated in the Cooperative AGREEMENT between COUNTY and Caltrans for the PROJECT.
- k. NEWHALL shall indemnify, release, defend, and hold harmless COUNTY, its officers, agents, employees and Board from any and all claims, liability and expenses, defense costs, and legal expenses (including attorney's and expert fees) including by reason of any acts or omissions on the part of NEWHALL under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of NEWHALL under this AGREEMENT.

(3) COUNTY AGREES:

- a. To review all right-of-way engineering prepared by NEWHALL and to acquire additional right of way needed to construct PROJECT.
- b. Upon review and approval of PROJECT plans, specifications, and estimates, and receipt of Caltrans approvals, to advertise PROJECT for construction bids.
- c. To obtain NEWHALL'S approval of construction contract amount prior to entering into the construction contract for PROJECT, subject to Section (2)i above.
- d. To furnish NEWHALL with information on all contract change orders for PROJECT and obtain NEWHALL'S input on all such contract change orders, subject to Section (2)i above.
- e. Upon receipt of NEWHALL'S DEPOSIT and the Letter of Credit, as set forth in Section (2)g above, to award and administer the construction contract and do all things necessary to complete PROJECT in accordance with the approved plans and specifications.
- f. To apply any GRANT funds received from the Los Angeles County Metropolitan Transportation Authority for PROJECT, currently estimated to be Six Million Three Hundred Twenty-two Thousand and 00/100 Dollars

(\$6,322,000.00), toward CONSTRUCTION COST OF PROJECT, per the attached Exhibit A.

- g. To make the following contributions toward CONSTRUCTION COST OF PROJECT: Four Million Two Hundred Thousand and 00/100 Dollars (\$4,200,000.00) in Regional Transportation fees from the Tesoro del Valle project, and Two Million Six Hundred Thousand and 00/100 Dollars (\$2,600,000.00) from the Castaic B&T Construction Fee District.
- h. To continue pursuing all potential sources of funding that may be available for PROJECT. If COUNTY receives any additional outside funding for the project, other than Surface Transportation Program – Local (STP-L), COUNTY will notify NEWHALL in writing and NEWHALL'S share of the PROJECT costs shall be reduced accordingly by that amount.
- i. If COUNTY receives STP-L funds for the PROJECT, NEWHALL'S share will not be reduced by that amount.
- j. To provide monthly billing invoices to NEWHALL after the award of the construction contract.
- k. To apply to CONSTRUCTION COST OF PROJECT the Regional Transportation fees from the Tesoro del Valle project, Castaic B&T Construction Fee District funds, GRANT funds, and any other funding sources designated for PROJECT on a monthly billing interval basis.
- l. During construction of PROJECT, to reduce the Letter of Credit amount based on the monthly payments received from NEWHALL.
- m. To invoice NEWHALL for the estimated cost of any unforeseen work that may arise during construction.
- n. To furnish NEWHALL, within one hundred twenty (120) calendar days after PROJECT completion, a final accounting of the actual CONSTRUCTION COST OF PROJECT including an itemization of actual unit costs and actual quantities for PROJECT.
- o. To credit NEWHALL, in the form of Castaic and/or Westside B&T Construction Fee District, as deemed appropriate by COUNTY, in an amount equal to the sum of the actual COST OF PRELIMINARY ENGINEERING and NEWHALL'S actual financial contribution toward CONSTRUCTION COST OF PROJECT.
- p. To credit NEWHALL, in the form of Castaic and/or Westside B&T Construction Fee District, as deemed appropriate by COUNTY, for all costs of remediation to bring right-of-way property donated by NEWHALL herein to

a condition free of hazardous contamination in compliance with applicable Caltrans standards.

(4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. This AGREEMENT may only be amended or modified in writing as mutually agreed to by COUNTY and NEWHALL.
- b. COUNTY may delay the award of the construction contract for PROJECT if NEWHALL'S DEPOSIT and Letter of Credit, as set forth in Section (2) g, above, is not delivered to COUNTY office following the opening of construction bids for PROJECT.
- c. NEWHALL shall review the final accounting invoice prepared by COUNTY and report in writing any discrepancies to COUNTY within thirty (30) calendar days after the date of said invoice. Undisputed charges shall be paid by NEWHALL to COUNTY within thirty (30) calendar days after the date of said invoice. COUNTY shall review all disputed charges and submit a written justification detailing the basis for those charges within thirty (30) calendar days of receipt of NEWHALL'S written report. NEWHALL shall make payment of the previously disputed charges or submit justification for nonpayment within thirty (30) calendar days after the date of COUNTY'S written justification. If any disputed amounts remain following the above procedure, NEWHALL shall immediately pay these to COUNTY, under protest, and may proceed to file any claim that may be appropriate.
- d. NEWHALL'S share of CONSTRUCTION COST OF PROJECT as set forth in Section (2) f above may be used for other transportation purposes in the County of Los Angeles.
- e. COUNTY, at any time, may, at its sole discretion, designate an alternative payment mailing address and an alternative schedule for payment of NEWHALL funds if applicable. NEWHALL shall be notified of such changes by invoice.
- f. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

NEWHALL:

Ms. Barbara Fortman
Newhall Land and Farming Company
23823 Valencia Boulevard
Valencia, CA 91355-2194

COUNTY:

Mr. Donald L. Wolfe
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

- g. NEWHALL shall not assign, transfer, convey or otherwise dispose of this AGREEMENT or its rights, title, or any interest therein, without COUNTY'S prior written consent.
- h. NEWHALL is not an agent or employee of the COUNTY by virtue of this AGREEMENT.
- i. If any provision or provisions of this AGREEMENT are for any reason adjudged to be unenforceable or invalid, it is the specific intent of both parties that the remainder shall subsist, be, and remain in full force and effect.
- j. This AGREEMENT shall be construed and interpreted under the laws of the State of California.
- k. In the event of a dispute arising from this AGREEMENT, the parties agree to participate in a non-binding mediation before resorting to litigation.

[illegible]

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their representative officers, duly authorized, by NEWHALL LAND AND FARMING COMPANY on _____, 2006, and by the COUNTY OF LOS ANGELES on _____, 2006.

COUNTY OF LOS ANGELES

By _____
Mayor, Los Angeles County

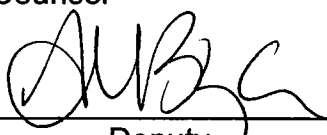
ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel


By  _____
Deputy

NEWHALL LAND AND FARMING COMPANY,
a California Limited Liability Company

APPROVED AS TO FORM:

By  _____
NWHL GP LLC, Its General Partner

By  _____
Newhall Attorney

By  _____
(Signature must be notarized.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA

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S.S.

COUNTY OF LOS ANGELES

On January 18, 2006, before me, Johanna Palmer, Notary Public

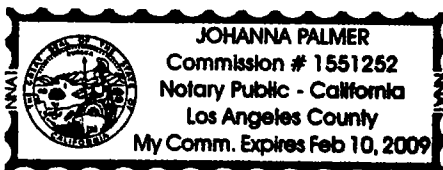
personally appeared **Steven D. Zimmer** and **Mark Subbotin**

☒

personally known to me,

9

proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal

Julian Palmer

Johanna Palmer
Notary Public

EXHIBIT A

FINANCE AGREEMENT

Total construction cost including construction engineering est. at \$4.4	\$33.722M
Grant funding	(\$6.322M)
County Contribution (Tesoro)	(\$4.2M)
County Contribution (Castaic B&T)	(\$2.6M)
Total Amount Due from NEWHALL	\$20.6M
Cash deposit to County	(\$3.5M)
Estimated balance amount	\$17.1M

The estimated balance amount to be provided in the form of a letter of credit from a federally insured lending institution whose financial rating is acceptable to the County.

07-LA- 5 KP R89.6/R91.3 (PM 55.7/R56.8)
I-5/Hasley Canyon Road Interchange
Interchange Improvement
07273 – 193204

District Agreement No. 07-4640

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 200__, is between the
STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to
herein as "STATE", and the

COUNTY OF LOS ANGELES, a political
subdivision of the State of California,
referred to herein as "COUNTY"

RECITALS

1. STATE and COUNTY, pursuant to Streets and Highways Code section 130, are authorized to enter into a Cooperative Agreement for improvements to State highways within the unincorporated area of the County of Los Angeles.
2. STATE and COUNTY are also entering into this Agreement pursuant to Government Code section 14529.7(a), which allows a local jurisdiction (with the prior concurrence of the appropriate transportation planning agency, the California Transportation Commission (CTC) and STATE), to advance a project included in the State Transportation Improvement Program (STIP) to an earlier fiscal year through the use of its own funds. One or more replacement projects may then be identified and included in the STIP at the originally scheduled fiscal year of the advanced project or other year as determined by the CTC.
3. STATE and COUNTY desire to construct improvements consisting of modifications at the I-5/Hasley Canyon Road Interchange including realignment and widening of the ramps, modifications to the Hasley Canyon Road overcrossing and modifications to the intersections of Hasley Canyon Road/The Old Road and The Old Road/I-5 southbound ramps, all collectively referred to herein as "PROJECT".
4. Pursuant to Government Code section 14529.7 (a), COUNTY has requested that the CTC amend the STIP to allow COUNTY to advance \$6,322,000 towards construction for PROJECT (currently programmed as the Regional Improvement Program (RIP) funds in the 2007/08 fiscal year) using local (non-State/non-Federal/non-gas tax) funds in fiscal year 2004/05 and replace it with a Replacement Project.
5. The CTC granted COUNTY's request on August 5, 2004, as part of the 2004 STIP adoption.
6. COUNTY proposes to prepare the contract documents and advertise, award, and administer the construction contract for PROJECT and STATE is agreeable to COUNTY's proposal.
7. The parties hereto intend to define herein the terms and conditions under which PROJECT is to be constructed, financed, and maintained.
8. Project development and right of way responsibilities for PROJECT were covered in a prior Cooperative Agreement executed by STATE and COUNTY on May 15, 2001 (District Cooperative Agreement No. 07-4441, Document No. 015069).

SECTION I

COUNTY AGREES:

1. To pay one hundred percent (100%) of the actual costs of construction capital and support required for the satisfactory completion of PROJECT, including changes pursuant to contract change orders concurred by STATE's representative and any "State-furnished materials".
2. As required by Government Code section 14529.7(a) and the adopted 2004 STIP, that the \$6,322,000 for PROJECT construction shall be provided by COUNTY in the earlier year to allow for the construction of PROJECT and ensure that PROJECT is deliverable.

3. To submit a written request for any "State-furnished materials" identified in the PROJECT plans, specifications, and estimates (PS&E) a minimum of forty-five (45) days in advance of the need for such materials. To then pay STATE, within fifteen (15) days of receipt of STATE's billing, the actual cost invoiced for the requested "State-furnished materials". COUNTY may take delivery of the "State-furnished materials" after STATE's receipt of COUNTY's payment and at the location directed by STATE.
4. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the State Contract Act, County of Los Angeles' Public Construction Act, and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by COUNTY, and/or performed under encroachment permit, are covered by provisions of the Labor Code in the same manner as are workers employed by STATE's contractors. COUNTY shall obtain applicable wage rates from the State Department of Industrial Relations and shall adhere to the applicable provisions of the State Labor Code. Violations shall be reported to the State Department of Industrial Relations. The contract shall also include the Federal DBE requirements as contained in Title 49 CFR, Part 23.
5. To have PROJECT constructed by contract to the satisfaction of and subject to STATE's acceptance in accordance with the STATE accepted PROJECT PS&E (contract plans).
6. Contract administration procedures shall conform to STATE's Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
7. Construction within the existing or ultimate State Highway right of way shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual.
8. To apply for necessary encroachment permits for required work within the State highway right of way, in accordance with STATE's standard permit procedures, as more specifically defined in Section III, Articles 3, 4, 5, 6, and 7, of this Agreement.
9. To comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Permit for General Construction Activities No. CAS000002, Order No. 99-08-DWQ including State Water Resources Control Board (SWRCB) Resolution No. 2001-046, which added sampling and analysis requirements, and the NPDES Permit for the State of California Department of Transportation Properties, Facilities, and Activities, No. CAS000003, Order No. 99-06-DWQ issued by the State Water Resources Control Board and any applicable future permits and orders. COUNTY shall prepare and submit the required information for notification to Region 4, Los Angeles, Regional Water Quality Control Board (RWQCB) with two (2) copies to the STATE's Coordinator. RWQCB deems that coverage under NPDES permit shall be obtained by submitting a NOI to RWQCB. Two (2) copies of the NOI shall be submitted to the State NPDES Coordinator a minimum of thirty (30) days prior to submission of an application for STATE issued Highway encroachment permit. COUNTY shall submit the Storm Water Pollution Prevention Plan or Water Pollution Control Program a maximum of twenty (20) days after award of PROJECT. COUNTY shall notify the STATE's Coordinator of the pre-construction so that said Coordinator can invite the RWQCB to the pre-construction meeting in accordance with the NPDES Permit for the State of California, Department of Transportation Properties, Facilities, and Activities.

10. In recognition that construction work for PROJECT done on STATE's property will not be directly funded and paid by STATE, for the purpose of protecting stop notice claimants and the interests of STATE relative to the successful completion of PROJECT, COUNTY agrees to require the construction contractor furnish both a payment and a performance bond naming COUNTY as obligee with both bonds complying with the requirements set forth in section 3-1.02 of STATE's current Standard Specifications prior to performing any construction work for PROJECT. COUNTY shall defend, indemnify, and hold harmless STATE and all its officers and employees from all claims by stop notice claimants related to the construction of PROJECT under the payment bond.
11. If any existing public and/or private utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, COUNTY shall make all necessary arrangements with the owners of such facilities for their protection, relocation, or removal in accordance with STATE's policy and procedure for those facilities located within the limits of the State highway and in accordance with COUNTY's policy for those facilities located outside the State Highway. The cost of protection, relocation, or removal inside STATE's right of way shall be apportioned between the utility owners and COUNTY in accordance with STATE's policy and procedure. COUNTY shall require any utility owner performing relocation work in the State highway right of way to obtain an encroachment permit from STATE prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way" shall be fully complied with. Any relocated or new facilities shall be correctly shown and identified with any unmodified facilities on the "As-Built" plans.
12. All surveys shall conform to the methods, procedures, and requirements of STATE's Survey Manual and STATE's Staking Information Booklet.
13. To provide, at no cost to STATE, all construction surveys, including mapping services necessary to perpetuate existing land net and alignment monumentation in accordance with Sections 8771 and 8765 of the Business and Professions Code; and to permanently monument the location of all roadway alignments, realignments, and right of way acquisitions. All of the above are to be shown on a Record of Survey filed with the County Surveyor. COUNTY shall deliver one copy of any field notes, filed Corner Records, and the Record of Survey required for execution of the above obligation, to STATE's District 07 Survey Branch. Whether the COUNTY uses their own staff or hires another entity to perform construction surveys, all survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
14. PROJECT material testing and quality control shall conform to STATE's Construction Manual and STATE's California Test Methods, and shall be performed, at COUNTY's expense, by a certified material tester acceptable to STATE.
15. To furnish, at COUNTY's expense and subject to the approval of STATE, a field site representative, who is a licensed civil engineer in the State of California, to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or subcontractor of the company, if any, that prepared the PROJECT PS&E.
16. The Resident Engineer for PROJECT shall coordinate the PROJECT Transportation Management Plan (TMP) implementation through the District's Traffic Manager.

17. At COUNTY's expense, to furnish qualified support staff, subject to the approval of STATE, to assist the Resident Engineer in, but not limited to, construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the plans and specifications. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may check the shop drawings, do soils foundation tests, test construction materials, and do construction surveys.
18. COUNTY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform in accordance with the scope of work and/or other pertinent criteria.
19. To make progress payments to the contractor and pay all costs for required staff services as described in Articles 15 and 17 of this Section I. STATE's representative shall review all contract progress pay schedules. STATE does not assume responsibility for accuracy of itemization on progress pay schedules.
20. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE with a complete set of "As-Built" plans in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. The submittal must also include all contract records, including survey documents, Records of Surveys (to include monument perpetuation per the Land Surveyor Act, section 8771). COUNTY shall also submit corrected full-sized hardcopy structure plans.
21. To retain or cause to be retained for audit by STATE or other government auditors for a period of three (3) years from the date of FHWA payment of final voucher, if applicable, or four (4) years from the date of final payment under the contract, whichever is longer, all records and accounts relating to PROJECT construction.
22. Upon completion of PROJECT construction, COUNTY will operate and maintain at COUNTY's cost any part of PROJECT located outside of the existing State Highway right of way (but including COUNTY underpasses and overcrossings of then existing State Highway right of way), until any subsequent acceptance of any part of PROJECT into the State Highway System by STATE, approval by the FHWA, if required, and conveyance of acceptable title to STATE.
23. If COUNTY cannot complete PROJECT as originally scoped, scheduled, and estimated, COUNTY will, only with STATE's prior written consent, amend the PROJECT contract plans and specifications for suitable resolution to ensure a form of modified PROJECT that will at all times provide a safe and operable State Highway System.
24. If cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, COUNTY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The cost for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.

25. To provide Construction Zone Enhancement Enforcement Program (COZEED), as a PROJECT cost, by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in the STATE's Construction Manual.
26. STATE's quality assurance activities referred to in Article 1 of Section II of this Agreement, do not include performance of any engineering services required for PROJECT. These services are to be performed by COUNTY.

SECTION II

STATE AGREES:

1. At no cost to COUNTY, to provide quality assurance to ensure that COUNTY's PROJECT work is performed in full compliance with the approved PROJECT PS&E (contract plans and specifications) and in accordance with STATE's then effective policies, procedures, standards, and practices. This quality assurance oversight function includes both the obligation and the authority, including a qualified representative of STATE who shall have authority to reject noncompliant PROJECT work and materials accepted by COUNTY, to order any actions needed for public safety or the preservation of property, and to assure compliance with all provisions of the encroachment permit(s) issued to COUNTY and COUNTY's contractor.
2. Upon proper application by COUNTY and by COUNTY's contractor, to issue, at no cost to COUNTY and to COUNTY's contractor, the necessary encroachment permits for required work within the State highway right of way, as more specifically defined in Section III, Articles 3,4, 5, 6, and 7, of this Agreement.
3. To provide, at COUNTY's expense, any "State-furnished materials" as shown on the PROJECT PS&E or as determined during construction of PROJECT. Within forty-five (45) days of receipt of COUNTY's request for "State-furnished materials", STATE will order those materials and STATE's Project Manager will have a bill submitted to COUNTY for the costs of those materials. Upon receipt of those materials and COUNTY's payment, STATE will make those "State-furnished materials" available to COUNTY at a designated site.

SECTION III

IT IS MUTUALLY AGREED:

1. STATE's contractual obligations are subject to State Budget Act authority, the appropriation of resources by the Legislature, and the allocation of funds by the California Transportation Commission.
2. All applicable procedures and policies relating to the use of Federal funds or State gas tax funds shall apply notwithstanding other provisions of this Agreement.
3. Construction by COUNTY of improvements referred to herein which lie within the State highway right of way or which affect STATE's facilities, shall not be commenced until COUNTY's original contract plans involving such work and plan for utility relocations have been reviewed and accepted by signature of STATE's District Director of Transportation, or the District Director's delegated agent, and until an encroachment permit to COUNTY authorizing such work has been issued by STATE.
4. COUNTY shall obtain aforesaid encroachment permit through the office of STATE's District Permit Engineer and COUNTY's application shall be accompanied by five (5)

sets of reduced construction plans of aforesaid STATE-accepted contract plans, and five (5) sets of specifications for PROJECT. Receipt by COUNTY of the approved encroachment permit shall constitute COUNTY's authorization from STATE to proceed with work to be performed by COUNTY or COUNTY's representatives within the District proposed State highway right of way or which affects STATE's facilities, pursuant to work covered by this Agreement. COUNTY's authorization to proceed with said work shall be contingent upon COUNTY's compliance with all provisions set forth in this Agreement and said encroachment permit.

5. COUNTY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within the State highway right of way or which affects STATE's facilities. The application by COUNTY's construction contractor for said encroachment permit shall be made through the office of STATE's District Permit Engineer and shall include proof said contractor has payment and performance surety bonds covering construction of PROJECT.
6. COUNTY shall provide a right of way certification prior to the granting of said encroachment permit by STATE, to certify that legal and physical control of rights of way were acquired in accordance with applicable State and Federal laws and regulations.
7. COUNTY shall not advertise for bids for the contract to construct PROJECT until after an encroachment permit has been issued to COUNTY by STATE.
8. During PROJECT construction, representatives of COUNTY and STATE will cooperate and consult with each other, and ensure that all PROJECT work is accomplished according to the PROJECT PS&E (contract plans and specifications), and STATE's applicable policies, procedures, standards and practices. Satisfaction of these requirements shall be verified by STATE's representatives who are authorized to enter COUNTY's property during construction for the purpose of monitoring construction activities.
9. PROJECT PS&E (contract plans and specifications) changes shall be implemented by contract change orders that have been reviewed and concurred with by STATE's representative. All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing the work. Unless otherwise directed by STATE's representative, change orders authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the "As-Built" plans.
10. COUNTY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through COUNTY's claim process. STATE's representative will be made available to COUNTY to provide advice and technical input in any claim process.
11. Any hazardous material or contamination of an HM-1 category found within the existing State Highway right of way during construction requiring remedy or remedial action (as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code) shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during construction requiring the same defined remedy or remedial action shall be the responsibility of COUNTY. For the purpose of the Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be

remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within the existing State Highway right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of proceeding with construction of PROJECT, that additional cost identified by STATE shall be borne by COUNTY. As between COUNTY and STATE, COUNTY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within a local road or other property. While STATE will exert every reasonable effort to fund the remedy or remedial action for which STATE is responsible, in the event STATE is unable to provide funding, COUNTY will have the option to either delay further construction of PROJECT until STATE is able to provide funding or COUNTY may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE.

12. The remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within and outside the existing State highway right of way during construction shall be the responsibility of COUNTY, at COUNTY's expense, as a consequence of proceeding with PROJECT construction. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place had PROJECT not proceeded. COUNTY shall sign any HM-2 manifest if construction of PROJECT proceeds and HM-2 material is removed in lieu of being treated in place.
13. If hazardous material or contamination of either HM-1 or HM-2 category is found during construction on new right of way acquired by or on account of COUNTY for PROJECT, COUNTY shall be responsible, at COUNTY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
14. The party responsible for funding any hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions proposed by COUNTY on the State Highway right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and those standards mandated by those Federal and State regulatory agencies.
15. STATE, in exercising its authority under section 591 of the Vehicle Code, has included any and all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code to the PROJECT areas open to the public traffic. COUNTY shall take all necessary precautions for safe operation of COUNTY's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by COUNTY, and for the protection of the traveling public from injury and damage from such vehicles or equipment.
16. Upon PROJECT completion and acceptance, subject to the approval of STATE, COUNTY will operate and maintain PROJECT facilities at its own cost until a Maintenance Agreement is executed or an existing agreement, if any, is amended to incorporate these new PROJECT facilities located on the State Highway.
17. Operation and maintenance of traffic signals, signs, and safety lighting shall be shared in accordance with existing Maintenance Agreement # LA-19-193886 entered into between STATE and COUNTY effective on April 15, 2002. The Exhibit A of said

agreement will be amended to include this signal as a part of said Maintenance Agreement.

18. Upon satisfactory completion of all PROJECT work under this Agreement, as determined by STATE, actual ownership and title to materials, equipment, and appurtenances installed within the State Highway right of way will automatically be vested in STATE, and materials, equipment, and appurtenances installed outside of the State Highway right of way will automatically be deemed to be under the control of COUNTY or an appropriate third party as determined by COUNTY. No further agreement will be necessary to transfer ownership as hereinbefore stated.
19. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of State Highways and public facilities different from the standard of care imposed by law.
20. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, consistent with the indemnification given hereinabove, COUNTY shall fully defend, indemnify and save harmless STATE from any and all claims, costs, suits (including appeals), or actions of every name, kind and description brought for or on account of injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.
21. Neither COUNTY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, consistent with the indemnification given hereinabove, STATE shall fully defend, indemnify and save harmless COUNTY from any and all claims, costs, suits (including appeals), or actions of every name, kind and description brought for or on account of injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.
22. Prior to commencement of any construction activity within the State Highway right of way, either STATE or COUNTY may terminate this Agreement by written notice to the other party.
23. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
24. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon completion and acceptance of the construction contract for PROJECT by COUNTY and the satisfactory completion of all post-construction obligations of COUNTY, with concurrence of STATE, or on June 30, 2008, whichever is earlier in time. However, the ownership, operation, maintenance, indemnification, and claims clauses shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of

District Agreement No. 07-4640

PROJECT be asserted against one of the parties, the parties agree to extend the termination date of this Agreement.

STATE OF CALIFORNIA
Department of Transportation

COUNTY OF LOS ANGELES

WILL KEMPTON
Director of Transportation

By: _____
Douglas R. Failing
District 07 Director

By: _____
Mayor, Los Angeles County

Approved as to Form and Procedure:

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By: _____
Attorney

By: _____
Deputy


Department of Transportation

Certified as to Funds:

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
District Budget Manager

By:  _____
Deputy

Certified as to Financial Terms and Conditions:

By: _____
Accounting Administrator